

COOK COUNTY SHERIFF'S MERIT BOARD

In the Matter of:

DEPUTY SHERIFF
SHERYL L. CAPPETTA

Employee # [REDACTED] Star #10476

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) Docket No. 1760
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DECISION

This matter coming on to be heard, by Board member Brian J. Riordan, pursuant to notice, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

1. Deputy Sheriff Sheryl L. Cappetta (hereinafter "Respondent" or "Cappetta"), was appointed a Cook County Sheriff on February 10, 1992;
2. In 2001, the Respondent was assigned to Police Courts South, 155 W. 51st Street, Chicago, Illinois 60609;
3. Respondent position as a Deputy Sheriff involves duties and responsibilities to the public;
4. Each member of the Cook County Sheriff's Merit Board, hereinafter "Board", have been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term;
5. The Board has jurisdiction of the subject matter and of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes;
6. Respondent was personally served with a copy of the Complaint against her and a Notice of Hearing and appeared before the Board to contest the charges contained in the Complaint; and
7. The Board has heard the evidence presented by the Sheriff and the Respondent and has evaluated the credibility of the witnesses and supporting evidence. After considering the evidence, the Board finds as follows:

Background

The Sheriff's Office alleges that on numerous occasions the Respondent was absent from scheduled work shifts and that the absences were unauthorized for at least six occurrences between July 6, 2012 and October 17, 2013. The Sheriff further alleges that Respondent was counseled on July 17, 2012 regarding the unauthorized absences. The Sheriff maintains that

Respondent was counseled on Sheriff Order 11.4.1.1 regarding the unauthorized absence policy as well as the steps in the levels of progressive discipline and available leave options.

In addition, the Sheriff alleges the Respondent continued to incur additional unauthorized absences in July 2013 and August 2013, and used unauthorized FMLA on August 6, August 7, and August 8, 2013. Additionally, the Respondent was "absent no call" on October 17, 2013 and tardy on March 14, 2014 and April 4, 2014.

The Sheriff alleges the Respondent violated the Rules and Regulations and General Orders of the Cook County Sheriff Courts Services Department, specifically

SHERIFF'S ORDER 11.4.1.1 (effective July 1, 2012)

UNAUTHORIZED ABSENCE, in its entirety, including but not limited to, the following subparts

II. POLICY

It is the policy of the Cook County Sheriff's Office (CCSO) to prohibit CCSOP employees from incurring Unauthorized Absences. Unauthorized Absences exacerbate absenteeism problems and strain the operations and employees of CCSO. CCSO employees receive benefit time and have a variety of leave options available to cover the need for short-term and long-term absences. Therefore, even if an employee is legitimately ill or has some other reasonable excuse for being absent, the employee must obtain an appropriate Authorized Status(es) prior to or immediately after the need for the absence(s).

VII. Disciplinary Procedures for Employees with Unauthorized Absence(s)

- A. Disciplinary procedure for employees without a Rolling Calendar clause in their applicable CBA will be progressive and will be in accordance with the applicable CBA.**

Furthermore, the Respondent's actions violated the Rules and Regulations of the Cook County Sheriff's Merit Board, specifically:

COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND REGULATIONS, in its entirety, including but not limited to, the following subparts:

Article X, Paragraph B

No Police Officer of the Cook County Sheriff's Police Department, Correctional Officer of the Cook County Department of Corrections or Deputy Sheriff of the Cook County Sheriff's Court Services Department will:

- 3. violate any of the general orders, special orders, directives or rules and regulations of the Cook County Sheriff's Department.**

Prosecution Case-In-Chief

The prosecution's case consisted of six witnesses from the Sheriff's Human Resources Department, OPR, deputy sergeants involved in discipline for attendance violations, the Chief of the Civil Division for the Cook County Sheriff's Office, and a witness from the General Counsel Office Cook County Sheriff.

Director [REDACTED] testified regarding her role in the Human Resources Department of the Sheriff's Office, and testified that she has been in the office for 25 years. She testified that she was familiar with how attendance is kept and maintained by the Sheriff's Office and fully described the process regarding timesheets from the various units and how they are turned into the Personnel Department and how it goes to Payroll.

She testified regarding the term "hard card" which was the physical timecard of each employee. The hard card for the Respondent was marked as Exhibit 1 and Director [REDACTED] testified regarding her review of the hard card. She testified that she had been working with this document since back in 1989 and was very familiar with the process. She testified that the information kept on these cards is recorded daily and that these are what she calls "the bible" in terms of when an employee is actually in attendance at work. She did testify there was a new system in approximately 2012 that they were calling virtual timecard but they still maintained a written copy to verify and perform audits on the timing of employee attendance. She testified regarding the various markings on each of the cards such as:

- "A" which means the employee calling in for a medical reason;
- "NST" which means no sick time and the employee called in on the medical line but did not have time available;
- "U" which means there is unauthorized FMLA time;
- "ANC" which means absent no call.

Director [REDACTED] testified regarding the auditing process which will at times correct and change some of the hard card information by her office and they will initial it when they do that. She testified that the cards are audited at least once every six months. She testified that the

employee can come in at any time and look at their hard card to verify the time they have been working and they have access to the information on the hard card.

The following dates were discussed:

July 6, 2012 - the employee called in but did not have any time off.

July 12, 2012 - the employee worked 7 hours and was tardy for 1 hour.

July 19, 2012 - the employee was on duty for 6 hours and tardy for 2 hours.

July 27, 2012 - the employee worked 6.5 hours but was tardy for 1.5 hours.

October 18, 2012 - the employee worked 5.5 hours and was docked for 2.5 hours. It does not say whether she was tardy or left early but she testified she did not work the full 8 hours that day. That would be considered unauthorized time off.

December 2012 - the employee was marked for 4 hours absent, no call meaning that the employee did not call for the remainder of the day to request authorized time off.

January 14, 2013 - a full day of absent – no call.

March 18, 2013 - employee worked 7 hours and was tardy for 1 hour.

July 8, 2013 – employee worked 7 hours and was tardy 1 hour.

July 29, 2013 – marked no sick time – employee was absent the entire day which is considered unauthorized absence.

August 6, 2013 – the employee was docked 1.75 hours for having no time left under sick or FMLA time which would be unauthorized absence.

August 7 and 8, 2013 – the employee took two days off of unauthorized FMLA.

August 9, 2013 – was NST – no sick time so it is an entire day of unauthorized sick.

October 17, 2013 – again absent no call so it was an unauthorized absence for the entire day.

March 24, 2014 – employee was docked 3.25 hours of tardy unauthorized absence.

April 4, 2014 – employee was docked for 1.0 hour of unauthorized absence.

Director [REDACTED] further testified that it is the responsibility of Respondent to know exactly how much FMLA, sick or medical time she has available. It is not the responsibility of either the Human Resource Department or the Respondent's supervisor to tell her how much time she has. The Respondent is trained and reminded frequently that it is her job to keep track of all of her time. She further testified that all of the employees are routinely informed and trained on where to call and who to call regarding the various potentially absences and/or being late.

Director [REDACTED] went over all of the counseling that is done with employees who have difficulties with absences or tardies and they are provided with all the options such as compassionate leave, FMLA leave or disability – both short term and long term. The witness further explained the qualifications for FMLA and how the time is built up for each individual employee and that the Respondent clearly ran through all of her FMLA within the timeframe allowed and was unauthorized absence on numerous occasions, well more than 6 that began the discipline process. She testified that it does not matter if the Respondent or any other employee has a medical excuse for why they are not coming into work if they do not have any time remaining. That is still considered an unauthorized absence.

Cross Examination

On cross examination the witness further clarified that it is the responsibility of the Respondent to keep track of her time. One of the reasons is that the Controller Office for the County actually issues paychecks and that sometimes there are mistakes and the Respondent as well as all other Cook County Sheriff's employees are constantly reminded to keep track of their own time so that they can verify.

The witness further explained in detail how the Human Resources Department keeps track of the time that each employee uses to know for sure when they are out of time and their absences are unauthorized. She testified that there is an attendance sheet at each facility such as where the Respondent worked on a daily basis and that is provided by the supervisor to the timekeepers in Human Resources. She does not believe those are maintained nor do they need to be after they are submitted to Human Resources. She testified that calling in for FMLA and calling in for a medical sickness are the same and that they are supposed to call into the medical call center. When they are going to absent for other reasons they are to contact their supervisor at the facility and that gets put on the attendance list which is sent to Human Resources. She testified that this information is readily available to the Respondent and that there should be no confusion by the Respondent as to when and where they call for each various reason they are going to be missing time. She testified that FMLA can be broken down in 15 minute increments if that is how the Sheriff's Office keeps track of the time.

Director [REDACTED] testified that the FMLA policies did change during the time that the Respondent was receiving FMLA. She testified that the Respondent has received FMLA almost every year since approximately 2001.

The witness was questioned regarding the December 17, 2012 which indicated 4 hours of FMLA and 4 hours of absent no call. Similarly, on December 18, 2012 and December 20, 2012, the Respondent requested FMLA leave where she was gone for 8 hours each day. She testified that previously you could take a certain amount of FMLA leave during a given week or a given month. That changed at some point and they were allowed to take FMLA in hourly and sometimes even smaller increments. She again testified regarding how the Sheriff keeps track of the use of FMLA and that is a very simple system which tracks it on a rolling basis and there is 480 hours on a rolling calendar year that the employee can use. It is clear that this employee used up the 480 hours and was on unauthorized leave for a number of occasions. She testified that it is the employee's responsibility to indicate what types of benefits she is using to be absent that day; whether it is FMLA or additional sick days or whatever. She also made clear that

Respondent would be informed when her FMLA use would change from hourly, daily or otherwise.

Director [REDACTED] went over March 24, 2014 and clarified that the Respondent was docked 3.25 hours because she was late and it was not that she left early because tardy means coming in late and it would just say -3.25 hours if they left early.

Re-Direct

The witness testified that sick time and medical time is the same thing. On redirect she went over the specific days of August 6, August 7, August 8 and August 9, 2013, which were clearly unauthorized FMLA, as well as October 12, 2013. At that point she exceeded her 480 hours that were allotted her for that year.

[REDACTED]

Witness [REDACTED] was a sergeant in the Cook County Sheriff's Office Civil Division Court Services. It was her responsibility to supervise courtroom deputies and she did this in 2012 and she was involved in discipline for attendance violations. She testified that when an employee has an unauthorized absence the forms are generated from OPR and are sent via email. They receive them and notify the effected member's chain of command and the chief to the lieutenant and have them appear for a hearing. She testified that it is a progressive disciplinary process with the first step counseling, second step is a written reprimand and the third step is a 1-day suspension. She testified that the fourth step is a 3-day suspension, the fifth step is a 5-day suspension and the sixth step is a complaint registered generated to OPR.

At that point, the OPR investigates. She testified she has been involved in many counseling sessions in which the affected member, a union member, she and [REDACTED] would be present. At that point they would tell the employee there was an unauthorized absence and the counseling includes a list of remedies. They offer them a pamphlet on County resources as far as filing for disability, FMLA or something to prevent it from happening again. In this counseling meeting there is a form that is filled out which goes back to the attendance review unit and the employee is given an option to apply for FMLA or disability and the member is required to sign the document. There is a packet given to the employee that they sign that they have received and it has pension board and personnel and FMLA coordinator information contained in it.

Subsequent unauthorized absence requires the discipline to become progressive and it would go to a written reprimand. During these hearings, the employee is given the opportunity to explain their side of the story and a union representative is always present. The only time a union member would not be present was when the employee rejects their presence.

She testified regarding her involvement with the Respondent and a counseling session on November 5, 2012. At that meeting were herself, [REDACTED] and [REDACTED] who was the previous chief steward for the Teamsters. This meeting took place at the Daley Center and Respondent Cappetta was presented with a fifth occurrence which was for October 18, 2012 where she was tardy. She was presented with the paperwork and she signed and dated it and she

requested a grievance procedure. The employee is given an opportunity to provide documentation for their absences at the grievance hearing and not at her level.

██████████ is with the Office of Professional Review and has been in that position since 2010. He is retired from the Federal Bureau of Prisons where he started in 1976. In 2012 he was Assistant Director of the Attendance Unit within the Office of Professional Review. He testified regarding the Sheriff's Order on unauthorized absences and verified that the progressive discipline that it recites. He had involvement in tweaking and amending the original Order. He stated that all Sheriff's officers and all employees are aware of the policy regarding unauthorized absences and they are required to sign acknowledgment of the General Order.

He stated the Order was created specifically because the Sheriff's Office was experiencing incredibly high absences which were not authorized and was causing the Sheriff's Office extremely large amounts of money in overtime to fill the vacancies. It also reduced efficiency and affected safety of both the inmates and the employees. He further testified that the high absences were affecting the safety of the courtrooms including judges, attorneys as well as the general public. He specifically stated that if a person does not have adequate time to cover an absence it does not matter if there is an actual legitimate medical excuse for their absence. The policy specifically states that the submission of medical documentation to mitigate their absence without sufficient benefit time to cover the absence will not be accepted to excuse an absence.

He testified regarding the options a person has if they have a legitimate medical condition such as FMLA, disability or hardship leave. He stated that these options are always provided to the employee which they are well aware. He testified that when the employee has an unauthorized absence the Attendance Review Unit gets the case and verifies the unauthorized absence by the computer and contacting the Department where the employee works.

He testified regarding the process whereby the employee goes through a counseling first and then a succession of discipline which includes suspensions. He went through the various forms that are provided and gone over with the employee such as the counseling form and the progressive disciplinary form.

He testified that an absence of work where the employee does not have sufficient benefit time to cover the absence is defined as an unauthorized absent. A tardy, in excess of 1 hour, is considered an unauthorized absence. He testified that an individual who took FMLA leave but did not have sufficient FMLA time would qualify as an unauthorized absence.

He testified that once an employee has six occurrences of unauthorized absence then they are required to send the matter over to the OPR and register a complaint.

Cross Examination

Mr. ██████████ testified that the OPR and the Attendance Review Unit are separate entities and that the Attendance Review Unit still exists today. He testified that the lettered codes with no sick time or unauthorized FMLA are entered by the Medical Call-In Center. He testified that

the Call-In Center has been around since approximately February 2012. It is his testimony that the Call-In Center is able to pull up how much time each individual employee has on the books. He stated that the Medical Call-In Center and the timekeepers put in the data on the computerized system. He further testified that an employee is supposed to call into their unit at least one hour prior to scheduled time if they are going to be absent. He believes tardy calls are handled by the sign-in sheets and the particular location where the employee works.

He testified that his involvement with the Respondent's case is that he sat in on one of her many counseling interviews and he was the reviewer for the complaint register and was responsible for the disciplinary action forms that were prepared. He testified that he specifically reviewed the computerized time grid system. He testified he did not look at the sign-in sheets at the actual location where the employee worked but that he relied upon those supervisors who call in the various times to be accurate. He is not aware if there is an actual auto recording tape of the call-ins to the Call-In Center. He testified that there was one 3-part form that was part of the case and it would have been reviewed. He did not review commander's logs and believes that once the commander sends in the attendance information they are destroyed.

He testified that he was aware that Deputy Cappetta was approved for FMLA but that she burned through that FMLA prior to her year being completed. He does not recall whether she was approved for intermittent timeframes less than 1 hour. He testified that there were several tardies on her hard card and that a tardy of 1 hour or more is considered an unauthorized absence. He did not compare the tardies to the FMLA that she was approved for. He said his investigation was not made aware of any 3-part forms for the tardies that she had on her hard card.

He testified that his policy is that he would go over the entire record of the case and determine whether there were some listed unauthorized absences that were mistakes or should have been listed as authorized. He did not find them in this case.

Re-Direct Examination

Mr. [REDACTED]'s review of Deputy Cappetta was for July 2012 to August 2013. He stated that OPR did not investigate any of the unauthorized absences after August 2013 even though there were many. He again reaffirmed that OPR's investigation did not turn up any dates that were listed as unauthorized that should have been authorized.

Re-Cross Examination

Mr. [REDACTED] testified that the day of their report was August 28, 2013 and that no additional unauthorized absences were included in their report after that date. When they did learn of additional dates where there were unauthorized absences after the report, they would use it as aggravation.

[REDACTED]

Ms. [REDACTED] is the Chief of Civil Division for the Cook County Sheriff's Office and has been with the Office for 26-1/2 years, all in the Civil Division. In 2012, she had the responsibility as Division Chief and she supervised all of the external units, including Civil

Process, Eviction, Swamp and Child Enforcement. She was involved in employee discipline for unauthorized absences once they are notified by OPR. She again went through the steps of counseling and then the progressive discipline that the Sheriff employs. She testified that they provide the informational packets regarding disability, FMLA, hardship and other remedies that the employee can explore. She testified that she was involved in the first counseling for Deputy Cappetta. She was called in for counseling because she did not have a medical day that she utilized and it was unauthorized. These meetings take place in their offices and Deputy Cappetta was provided with all of her options. The form provides that the employee, such as Deputy Cappetta, is to respond to them within a certain amount of time what their intentions are, such as seeking disability, FMLA or the Employee Assistance Program. It stated on the form that Deputy Cappetta is trying to apply for FMLA and will be applying for that as soon as she had a required 1,250 hours of work for the previous rolling calendar year. She did not recall that Deputy Cappetta provided her with any mitigating type circumstances during the session. During the sessions they have access to the time records to make sure there are no inaccuracies and the employee has a chance to review those. If the employee came in with records contradicting the time record that they had they would write a memo correcting it. They would then move the employee back the disciplinary track if there were mistakes.

Cross Examination

Ms. [REDACTED] testified that the actual record she has during the counseling sessions are the actual time card or hard card. She stated it is computerized and is generated by the timekeepers. She does not review the sign in sheets as that information is forwarded to the timekeepers so the same information is provided. She stated that if there were a question or discrepancy that they could go look toward the sign in sheets if they are still available. She stated she does not recall the Respondent providing any 3-part forms requesting any time off for her unauthorized absences. She stated it is a violation of the policy to fill them out after the fact if you have missed a day or you have an unauthorized absence.

Re-Direct

Filling out a 3-part form does not affect the authorized or unauthorized status. If you do not have the time, filling a 3-part form will not excuse an absence.

Re-Cross Examination

The 3-part form can only be done after the fact on a medical day. But that would only be if they had medical time available. She testified that FMLA works the same way and they have to use their FMLA time and filling out a 3-part form if they do not have FMLA time does not excuse the absence.

[REDACTED]

Mr. [REDACTED] is General Counsel for Cook County Sheriff's Office and in 2012 he was the Chief Deputy supervising the employees at the courthouses through the County and Civil Process Evictions. He would be involved in the disciplinary meetings regarding attendance issues. He testified that the attendance review unit and he would assist in sitting in on the counseling sessions. The process included his office being notified of attendance problems by

OPR and they would meet with the employee and explain the counseling and the progressive discipline that the Sheriff evokes. He reviewed the progressive discipline regarding attendance problems. He was shown the unauthorized absence and disciplinary action forms that are filled out and taken with, described and discussed with the employee. He stated these meetings took place at the Daley Center and they would have a union representative present at all times.

Mr. [REDACTED] stated he recognized Deputy Cappetta and he did meet with her in August and November of 2012 based on his signatures on the forms. He stated that his signature as well as Deputy Cappetta's signature was contained on each of the forms. The employee was explained the process and was shown the documents through the meeting. The employee was given the opportunity to explain and provide mitigating evidence but he does not recall Ms. Cappetta doing that. The first absence they discussed was July 12, 2012. Additional dates discussed during the August 9th meeting were July 19, 2012 and July 27, 2012. At this meeting she was in step 3 which would be the fourth occurrence of absence. He stated that another meeting took place based on the documentation on November 5, 2012. There was another step in the progressive disciplinary cycle which would be her fifth occurrence for unauthorized absence on August 18, 2012. At his point she was given a 5-day suspension and she was explained if there was one more it was going to OPR for a complaint. He never conducted these meetings without a union representative present. He explained the grievance procedure box on the form was there so the employee could grieve the disciplinary if they disagreed with the finding. He testified that if the employee provides documentation showing that the absences were actually authorized and the discipline is not imposed.

Mr. [REDACTED] next testified regarding Sheriff's Exhibit 6 which is a memorandum from [REDACTED] which outlines the outcome of the grievance and that some of the unauthorized time off were consolidated and treated as one occurrence rather than separate occurrences. The memo also indicates that if there are any additional subsequent violations of unauthorized absences it would trigger an OPR investigation. This document was provided to the Respondent.

Mr. [REDACTED] next testified regarding Exhibits 7 and 8 which were Complaint registers which he signed. These documents were dated January 30, 2013. The forms represented additional unauthorized absences and tardies which resulted in a sixth occurrence. July 8, 2013 was the date that was listed.

Cross Examination

Mr. [REDACTED] stated that his involvement with Deputy Cappetta was after the initial counseling session which was July 17, 2012 and his first meeting with her was in August 2012. He testified that they discussed all three dates on their August 9, 2012 meeting. He testified regarding the Collective Bargaining Agreement and he was unfamiliar with whether it was in exact compliance or identical to the General Orders. Respondent attorney attempted to elicit testimony from the witness regarding the Collective Bargaining Agreement contradicting the General Order. However, the witness testified that both documents provide for progressive discipline. He testified that it was okay to discuss three separate dates with the employee all at one time. The dates were July 12, July 19, and July 27.

Mr. [REDACTED] testified that supervisors are to provide the employee with written notice of their meeting regarding the discipline. Therefore, they would have the opportunity to gather any evidence that they would like to try to contradict the unauthorized absences. He testified the employee is made aware of the allegations when they are told of the meeting at their workplace. They may not be told of the specific dates but they are told they need to meet with the Attendance Review Unit regarding unauthorized absences. He testified that they would give the employee time to go back and gather documents and research it if the employee told them they had such information. He testified that the employee is required to sign the document on that day but that they can go back and gather additional evidence if they have it. He testified that most deputies know the nature of the meeting when they are called in and that each employee is responsible for their own time and should know when they have been off for unauthorized absences. He testified that most deputies know when they are signing in and signing out and when they have not shown up for work. He stated that he does not believe the deputies are unaware when they are called in for these counseling sessions of what dates they have not shown up for work. He testified that the employee has a choice to accept the discipline, grieve the matter or go to a hearing before the Merit Board. He testified that he does allow for them to reconvene the meeting if the employee tells them at the meeting that they have documentation that support their absences and make them authorized. He does not recall if Ms. Cappetta did that in this case.

[REDACTED]

Ms. [REDACTED] is an investigator with OPR and has been with the Department since approximately 2013. She was specifically involved with attendance review and unauthorized absence cases. Her job is to interview the accused, interview witnesses, collect data and documentation to file a final report. She was in charge of investigating Sheryl Cappetta after her sixth unauthorized absence. She testified that she interviewed Deputy Cappetta on two different occasions and during her investigation she reviewed the grievance procedures taken by Sheryl Cappetta. She understood that through the grievance process a couple of her unauthorized absences were lumped together and she was taken a few steps back in the progressive discipline process. After that occurred they called her back in to discuss additional absences that she had accrued since the previous interview and since the grievance.

The interview takes place at 3026 S. California at the OPR offices. During the interview they go over the specific dates that she has accrued as unauthorized absences, she asked the witness if she recalls those, and the witness is given an opportunity to provide documentation to her. If information is brought by the employee that shows that some of the absences should be authorized, she will make changes as necessary. A summary is written up after the interview and the accused is provided a copy. They are able to read it and if they agree they sign the bottom of each page and sign the last page. They are allowed to make changes and initial them if there are mistakes on the statement. Ms. Cappetta was provided all of her administrative rights and right to counsel information which she signed off on. Any questions by the employee she is there to answer them. The accused signs off on all documentation. In this case, Deputy Cappetta was present with her union representative so she signed acknowledging that her union representative was present and she was waiving counsel at that time.

She testified the interview took place on April 23, 2013 and they discussed the various unauthorized absence that she had accumulated. The Respondent had different responses for different absences stating that she had at one point submitted a 3-part form requesting a day off and another she recalled [REDACTED] which would not allow her to get up on time, and there were various explanations for why she was not present at work. She was also unable to provide any explanation for some of the dates admitting the absences were unauthorized. Deputy Cappetta had no changes to the interview summary that she prepared. She signed it and initialed the pages.

The second interview was conducted on August 20, 2013. They went through the same procedure as before. She signed off on all the documentation. She appeared with counsel. During the interview they discussed additional unauthorized absences that had occurred since the last interview in April. She again provided documentation about hospital visits but could not recall or submit information on the remainder. **She indicated that she admitted she was out of FMLA time.** She testified that the explanations given by Deputy Cappetta did not excuse her unauthorized absences because the reasons for not being at work do not negate the fact that they have benefit time available. The documentation provided by Deputy Cappetta did not justify the unauthorized absences because she was out of benefit time. They found that Deputy Cappetta did violate the General Orders and the Rules and Regulations of the Sheriff's Department, specifically, Sheriff's Order 11.4.1.1. This Order specifically states that even there is a legitimate medical condition or excuse it does not excuse an absence if you do not have sufficient time. The only way to attempt to correct unauthorized status is FMLA, compassionate leave, disability or injury on duty. In reviewing Deputy Cappetta's previous disciplinary history she found several attendance related issues and she had no complimentary history. She testified that there was nothing in her file that Deputy Cappetta was acknowledged for or something positive that she received certificates or acknowledgement for.

She put a final report together recommending that Deputy Cappetta be terminated.

Cross Examination

Ms. [REDACTED] testified that Deputy Cappetta did tell her that she was unable to reapply for additional FMLA time until October 2013. She does not recall what the FMLA rulings had been in Ms. Cappetta's past. She testified that the penalty and progressive discipline is pre-determined and set by the Sheriff based on the unauthorized absences and general Order. She testified that the benefit time she spoke of was that Deputy Cappetta did not have sick time or vacation time. She does not recall if she had any FMLA time available but did not believe so. She said the officer has the opportunity to make any changes or correct any unauthorized time and explain that they actually do have benefit time, sick time, vacation time or any other available time. She testified that she does look at the actual timekeeper records and hard cards. They look at all benefit time that is available. She testified they do not "audio record" their interviews. She testified that there are two people there who take notes and the summary is drafted from those notes.

Respondent Case-In-Chief

Sheryl Cappetta

Ms. Cappetta testified that she is employed with the Cook County Sheriff's Department Court Services and has been with the Department for 23 years. She is stationed in Police Courts South in Englewood at 51st & Wentworth. She has requested FMLA every year since 2001. She was also on disability at some point for almost two years and when she came back on and got enough time (1250 hours) she again requested FMLA. She was not on disability for an injury on duty; it was for medical reasons. She went off disability in 2004. She went out on on-duty injury in 2010 and she was out for approximately 1-1/2 years. She stated that she does not accrue sick or benefit time when she is out on injury. She testified you are required to use that time off.

She testified in December 2011 when she came back to work she still had the same ailments which require her to request FMLA leave. In October 2012, she was not granted FMLA because she had not worked enough hours in the previous year. She was granted different levels of FMLA which could take different increments. She went through all of her various requests for leave for FMLA each year. She stated that in October 2012 her intermittent FMLA was denied and that she was not allowed to take in hourly increments. In previous years, it was not specified. She testified that then again in 2014 she was allowed FMLA intermittently. She testified that during every request for FMLA her physician provided the necessary information which explains she should be allowed to take in intermittently. She testified that on one of the dates in question July 6th, she filled out forms to take the day off and was told that she had the time off. She testified that it does say on her hard card that no sick time zero was marked for July 6th.

She testified and admitted that since they first started on the job they are responsible to keep up with all their own time. They can get these timesheets off the computer and you can request it from personnel. She explained all the various abbreviations for the time card such as vacation, float, personal time, etc.

Next, the Respondent testified regarding July 12, 2012. She was charged with being tardy more than 1 hour. She testified regarding the sign in sheet which had her name on there but it was crossed out indicating she was tardy. The sheets are maintained at the facilities. Under her time on that day there is a strike through the printed portion. It is her Lt. [REDACTED] and it says she was tardy that day. She disputes this in her testimony. She testified that she may have left but not by choice. She cannot tell if she was sick or what happened. She testified that she does not believe was not late on this day. She did not request the day off on this date. And she did not request to leave early on this date. She never followed up, looked at her "hard card" or had this fixed in 2012.

The next date is July 19, 2012 where she was alleged to have been tardy for 2 hours. According to the timesheet she testified on Tab 12 that she was tardy. She testified that she admitted she was not covered by FMLA on July 19, 2012.

Tab 13 indicates July 27, 2012 where she is alleged to have been tardy more than 1.5 hours. She looked over the timesheet on that day and it shows she did not sign in. She does not know if she worked that day.

Next she testified regarding October 18, 2012 and she was accused of being tardy 2.5 hours that day. According to the timesheet she was tardy 2.5 hours on October 18, 2012. She believes she was covered by FMLA on that date. She states that she was sick on that day. She does not recall who she called in and talked to on that day. She said she called into the facility on that day telling them that she would be late. She testified that she used FMLA on October 18, 2012. She does not recall if she called into the Call-In Center and asked about her FMLA time for when she was going to be tardy. It was her intent to use her FMLA time on October 18, 2012.

Next she talked about December 19, 2012. She was alleged to have been absent no call for 4 hours. She looked over the sign in sheet for that day and shows she did not sign in for December 19, 2012. She testified she was not at work on that day and she says she called in for FMLA. She testified she called in for the entire day not just 4 hours. She testified that she recalls that day because her brother had just passed away and he son was in the hospital. She believes she was off the entire week that week including December 16, 2012. She was not a work on December 16, 2012 as a regular day off. On December 17, 2012 she testified she called in for FMLA as well as the 18th. On December 19, 2012 her hard card indicates absent no call. She had no reason why. For December 20, 2012 her report indicates FMLA CU which is comp time. She testified she did not fail to call in on December 19, 2012 but did not show up for work the entire day. She testified she called the Call-In Unit.

The next date is January 14, 2013 absent no call 8 hours. She testified that she was absent on that day and did not sign her sign in sheet. She stated she called in on January 14, 2013 to both the facility and the Call-In Unit. She did not call in until approximately 11:00 a.m. even though she was scheduled to start at 8:00 a.m. She testified waited three hours because she was ill on that day. She testified she was approved for FMLA at that time. She testified she called both the facility and the Call-In Unit that she had FMLA time and to mark it down on that date.

On March 8, 2013, she testified she is accused of being tardy 1 hour and that according to the sign in sheet she did sign in and she was tardy. She said she called on that date and was approved for FMLA.

The next date is July 8, 2013 when she was tardy for more than 1 hour. The sign in sheet was reviewed and she did sign in on July 8, 2013 and according to the sheet she was tardy. She believes she was covered for FMLA and had time available on July 8, 2013. She testified the reason she was late was related to her FMLA condition. She does not recall if she called into the facility letting them know she would be tardy.

The next date is July 29, 2013 and she was docked 8 hours for no sick time and she did not sign in that date. She testified that she did call into the facility on July 29th and the Call-In Center. There is no documentation that shows she called either place in the record. She testified

she was on FMLA July 19, 2013 and she believes she still had FMLA time available. She was in the hospital related to her FMLA.

The next day August 6, 2013 it is alleged she was off for 1.75 hours for unauthorized FMLA. She did not sign in on August 6, 2013 and she was not present at work on that date. She believes she was approved for FMLA on August 6, 2013. She states she was in the hospital again on August 6, 2013. She believes she was in the hospital for 4 days at that time.

The next date is August 7, 2013 – 8 hours unauthorized FMLA. She was not at work and did not sign in. She believes she called into the Call-In Center on August 7, 2013 to request FMLA. She believes she still had available time for FMLA on August 7, 2013.

The same is true for August 8, 2013. She believes on August 8, 2013 she was off work because she was meeting with the Cook County doctor to get a return work order. [REDACTED] She then was released to go back to work on the following Monday.

August 9, 2013 she was docked 8 hours for having insufficient time. She was not released to go back to work on the next day August 9, 2013 so she did not show up for work. She said she called both the facility and the Call-In Center on August 9, 2013. Although asked for, the Respondents were not provided additional records regarding the Call-In Center data for these dates as they were unable to be located by the Sheriff's Department.

On August 12, 2013 she was docked 8 hours for no sick time. She did not sign in on that day and it was indicated for no sick time. On that date she believes she was back at the County doctor to get a return to work order. She was scheduled to work 7:00 a.m. but her appointment was not until 11:00 a.m. on August 12, 2013. She also had to go to the Drug Unit so she did not have time to go into work.

The next day is October 17, 2013 and she states she was absent on that day and she was at a doctor's office filling out FMLA paperwork. She does not recall if she called into the facility and who she talked to. She also believes she called the Call-in Center. She does not believe she called in after 7:00 a.m., her start time.

Next is March 24, 2014 and she was docked 3.25 hours tardy but she does not believe she was. The sign in sheet indicates that she signed in at 7:00 a.m., but the out time is 11:45 a.m. She said she was made to leave by Lt. [REDACTED] because she was having [REDACTED] She believes she was on FMLA on March 24, 2014. She believes this was not an unauthorized absence.

The next day is April 4, 2014 tardy 1 hour and she does not sign in on that date. She was schedule to work 7 – 3 and she did not leave early on that date. She got sick at lunch but did not leave. She said her sickness was related to her FMLA and she believes she was covered for that time off.

She believes she was approved for FMLA up until October 2013. She believes she also had sick time during that time. She does believe that she may have used all of her other benefit time like vacation, comp time. She thought she brought information to the various counseling

sessions but she cannot recall specifically. She thought there may have been a 3-part form that she presented. In the second session, she states that her union steward told her to be quiet and she was not given an opportunity to respond to the allegations. She said she was required to sign the forms at that time.

She testified regarding her grievance procedure. **She admits there were times when she was absent that was not authorized.** She believes that some of time was covered by FMLA and that she followed all of the proper procedures. She testified that the conditions she suffers from makes it more difficult for her to keep her for own records of her time. But she attempts to do so.

Cross Examination

Prior to cross examination, the record will reflect that even though the witness testified numerous times that she did not have call logs and they were not presented, documents were shown that exhibited Sheriff Exhibits 36 and 37 and call logs for 2012 and 2013 were provided to Respondent in discovery. Further, the Sheriff provided documentation and support that all of the 3-part forms for 2012, 2013 and 2104 were tendered. Bates 601 – 672. In addition, Sheriff's Exhibit 13, which is all the call logs starting in January 1, 2013 were admitted into evidence without objection.

She admitted that she is required to keep up with the General Orders and all the Sheriff's Rules and Regulations. She is given copies of these and has to sign and acknowledge that she has received them. She admitted that she specifically was told she was not allowed to take FMLA in hourly increments in October 2012. She received a copy of the form that outlines that and she read the form. She stated she went and talked to the FMLA manager once she got this new rule that she could not take her FMLA in increments. She stated that she thought the person told her that it was a mistake and she did not ever get a new form. She stated that never got a new memo indicating that the she was actually approved for hourly increments. She never followed up.

Next on October 28, 2013, she again received a memo that she was not approved for hourly increments of FMLA. She stated that she read that at the time. She stated she went to talk to the same person about this. She stated she never got a new memo correcting it.

She testified that she was brought in for counseling session and several additional disciplinary meetings. She recognized all the forms and admitted to all the meetings. She testified that on each occasion she believed she called the timekeeper to ask how much time and she was told that she had the time available.

Basically her testimony is that everyone else is making mistakes all the way through the process. She testified regarding the various suspensions she was given over the disciplinary time. She testified she grieved the various disciplines and does not remember the outcome of the grievances. She was provided union representation at all of her hearings. She testified she did have legal counsel at one meeting with OPR and that her union steward was with her during the other. She testified she never inquired from the Teamsters what the results of her grievances were. She testified at numerous times that she could not remember things because it was a long

time ago in direct contradiction to her very specific memory of calling in on various dates that were the same timeframe.

She admitted that in August 2013 she exhausted all of her FMLA time, the entire 480 hours. She admits that she was tardy on July 19, 2012. She admits she did not have any FMLA time at that time. She again admitted on July 27, 2012 she did not go to work that day. She admitted on October 18, 2012 she signed in 2-1.2 hours late. She testified she always would have called her facility if she is going to be late.

For December 19, 2012, she was shown the Call-In Log Sheriff's document 682 and it reflects she called in requesting 4 hours. She agreed that it is not reflected that she requested the entire 8 hours off. She testified and agreed that once she accrued time she was using it immediately.

On January 14, 2014, she admits calling into the facility at approximately 11:00 a.m. even though her shift started at 8:00 a.m. She admitted she was supposed to call within 1 hour before her start time. She admitted this is an authorized absence if she has no FMLA or time available.

Next, on March 18, 2013, she was more than 1 hour late again. She does not recall if she called the Call-In Center. She admitted that the paperwork shows that she did not call into the Call-In Center.

She does not recall calling into the Call-In Center on July 8, 2013 for her tardy.

She went over her OPR summary from August 20, 2013, and she did not tell OPR that she called into her supervisors. She admitted reviewing it and signing it.

She admitted that she did not go into work on July 29, 2013 stating that she was in the hospital. She admits that the OPR statement does not reflect that she was in the hospital from August 6 through August 8 like she claimed. Now her testimony is that she could not go to work because she was not cleared by the County doctor and she may not have been in the hospital. She admitted she did not raise any of the dates in late July and early August 2013 with anybody to try and explain that they were actually authorized absences. She does not recall what time she had available on August 12, 2013 when she was visiting the County doctor.

On October 17, 2013, she did not go to work but she states she called the Call-In Center. She called in at 9:00 a.m. and her shift was at 7:00 a.m. to 3:00 p.m. She agreed that she was ill and she did not call in at the proper time.

Redirect

She agrees that she was not in the hospital on August 9 through August 12 even though that is what she told OPR. She testified there were several discrepancies in the paperwork regarding what type of leave she was requesting as well as whether she was in the hospital or not. She testified that she calls in on all the days that she was absent in December 2012. She testified that the procedure changed during the year 2012, 2013 and 2014, and they were required to call in different locations for different reasons. She argued that it was a mistake that she was

not allowed to take the incremental leaves and that it would lead to her additional occurrences. She stated that her conditions did not change at all it was a change in the policy by the Sheriff's Office. She testified that the Call-In Center would not notify her that she did not have time when she would call in. The witness could not provide any documentation regarding the meeting she had with FMLA coordinator regarding her belief that she could still take FMLA in increments.

Findings of Fact

Based on the evidence presented, the testimony of the witnesses and the documents admitted into evidence, it is the Board's decision that the Respondent Sheryl Cappetta did violate the Sheriff's Orders and the Cook County Merit Board Rules and Regulations. Specifically, Respondent is guilty of unauthorized absences as outlined in paragraphs 3, 4, and 6 of the Complaint filed against her.

It is Board's decision that Respondent Cappetta's testimony was completely non credible in that she could allegedly remember specific dates of when she allegedly called into the Call-In Center however on cross examination could not remember virtually anything. Respondent Cappetta's entire case consisted of her own self-serving statements about others possible mistakes however had no witnesses or documentation to support her position. She did not bring in any witnesses to contradict any of the Sheriff's documentation or litany of witnesses that testified specifically and with credibility to the long and tedious process that they went through with the Respondent regarding her enormous number of absences and tardies from work. Her only testimony was to try to establish that mistakes could have been made in the sign in sheets, the call in logs and her hard card, and that she "thought" she had "time on the books."

However, she admitted to many of the absences that were outlined in the Complaint as well as admitted to the fact that it was her own responsibility to keep track of all of her time. She admitted she ran out of FMLA time and she admitted she met with the FMLA director and received a specific memo stating that she could not take FMLA in increments as she was attempting to do, and that she would be charged an entire day of unauthorized absence when she was not present at work. She continued to have unauthorized absences even after all these counseling and warnings.

Respondent Cappetta was given numerous chances to correct her chronic and disruptive absences and tardies and failed to do so. The Sheriff has shown that even after numerous attempts to assist Ms. Cappetta with her absences, counseling, and step discipline, Ms. Cappetta continued to have numerous unauthorized absences in violation of the Sheriff's attendance policy. She has admitted as much in her testimony.

It is unfortunate that the Respondent is going through various medical conditions, however, the Sheriff needs to run the Department efficiently, effectively and with staff who show up for work. It is well-established and documented the additional stress, safety concerns and costs associated with employees such as Respondent Cappetta who do not show up for work on time or at all.

CONCLUSIONS OF LAW

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Based on the evidence presented and after assessing the credibility of the witnesses and the weight to be given the evidence and the record, the Board finds that the Respondent did violate the Rules and Regulations of the Cook County Sheriff's Office and the Merit Board as outlined above and in the Complaint.

Wherefore, based on the foregoing, it is hereby ordered that Respondent Sheryl Cappetta be separated from employment with the Cook County Sheriff's Office effective

April 18, 2014.

Dated: April 8, 2015

[REDACTED]
James P. Nally, Chairman

[REDACTED]
Byron Brazier

[REDACTED]
John Dalcandro

[REDACTED]
Jennifer Bae

[REDACTED]
Pat Brady

[REDACTED]
John Rosales

[REDACTED]
* Brian J. Riordan - Hearing Officer

[REDACTED]
Kim Widup

[REDACTED]
Vince Winters